IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 3876 of 2006()

AGAINST THE ORDER DATED 15/11/2006 IN CMP.5551/06 IN CC.556/2004 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER:

P.M. BASHEER,
PROPRIETOR,
M/S. RAISA CREATION,
T.C.76/1320,
CROSS-1 BAGATH SINGH ROAD,
PETTAH, THIRUVANANTHAPURAM.

BY ADV. SRI.M.TRIPTEN

RESPONDENTS:

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1. U. SASIDHARAN, PROPRIETOR,
M/S. ULLATTIL CINE MEDIA,
41/1579, ARANGATH ROAD,
COCHIN-18.

BY P.P. SRI. PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2006 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3876 OF 2006

Dated this the 23rd day of November, 2006

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the N.I. Act. The complainant was examined; but he was not cross-examined. Later, an application was filed under Sec.311 of the Cr.P.C. to recall the complainant for cross-examination. That petition was allowed. The complainant was present on 10/11/2006; but the complainant was not cross-examined allegedly on the ground that the learned counsel for the accused was engaged in some other court. Thereafter, the case was posted for 313 examination. On that day, the learned counsel for the accused filed yet another application for permission to recall the complainant and cross-examine him after reopening the evidence. The learned Magistrate by the impugned order dismissed the application. The accused was absent. His application to excuse his absence was dismissed and a non-bailable warrant has been issued. The case now stands posted to tomorrow, it is submitted.

2. The learned counsel for the petitioner submits that the denial of an opportunity to cross-examine the complainant works out great prejudice and hardship to the petitioner/accused. The interests of justice demand that a further opportunity is given to the petitioner to cross-examine the complainant.

3. Having heard the learned counsel for the petitioner and having perused the impugned order, I am satisfied that subject to appropriate conditions the petitioner can be granted an opportunity to cross-examine the complainant. For granting this limited relief, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent.

4. In the result, this Crl.M.C. is allowed subject to conditions. The petitioner shall appear before the learned Magistrate tomorrow and shall get ready to cross-examine the complainant. Such an opportunity shall be granted to the petitioner by the learned Magistrate on condition that the petitioner pays an amount of Rs.500/- as costs to the complainant. If the complainant is not present tomorrow, the learned Magistrate shall post the case to the next date to enable

the petitioner to cross-examine the complainant. After such examination only, the learned Magistrate shall proceed to conduct the 313 examination.

5. Hand over a copy of this order to the learned counsel for the petitioner forthwith.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge